94-1970

NO. ____

APR 12 1995
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October, 1994 Term

GULF SOUTH MEDICAL AND SURGICAL INSTITUTE, BURKS-FARBER CLINICS AND GEORGE M. FARBER, M.D.,
Petitioners,

v.

AETNA LIFE INSURANCE COMPANY, LAFARGE CORPORATION, AND MEDICAL REVIEW INSTITUTE OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JAMES D. MORGAN
Counsel of Record
FISHER & PHILLIPS
201 St. Charles Avenue
Suite 3710
New Orleans, Louisiana 70170
(504) 522-3303

ATTORNEYS FOR RESPONDENT, LAFARGE CORPORATION

ROBERT L. REDFEARN, JR.
SIMON, PERAGINE, SMITH & REDFEARN, L.L.P.
30th Floor - Energy Centre
1100 Poydras Street
New Orleans, LA 70163-3000
(504) 569-2030

ATTORNEYS FOR RESPONDENT, AETNA LIFE INSURANCE COMPANY

BEST AVAILABLE COPY

TABLE OF CONTENTS

Page

ARGUMENT 3

CONCLUSION 5

No. _____

IN THE

Supreme Court of the United States

October, 1994 Term

GULF SOUTH MEDICAL AND SURGICAL INSTITUTE,
BURKS-FARBER CLINICS AND GEORGE M. FARBER, M.D.,
Petitioners,

v.

AETNA LIFE INSURANCE COMPANY, LAFARGE CORPORATION, AND
MEDICAL REVIEW INSTITUTE OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The reasons that certiorari should not be granted in this matter are apparent on the face of the Petition for Writ of Certiorari (herein the

"Petition"). Lafarge Corporation and Aetna Life Insurance Company, Respondents herein,[1] will not burden the record with lengthy argument here. Instead, they would simply point out several pertinent facts.

This case does not present any dispute over an important question of federal law. To the contrary, Petitioners stipulate that the courts below applied the correct standard of review, i.e. abuse of discretion. No conflict among the Courts of Appeals is presented. Petitioners claim instead that this Court should exercise its discretion and review the matter because the courts below have somehow departed from the usual course of judicial proceedings.

Once understood, however, the arguments in the Petition are nothing more than the same factual arguments that the trial court and the Court of Appeals found unpersuasive. Summary Judgment was granted and affirmed because the uncontested material facts and the applicable legal principles called for dismissal of Petitioners' claims. The same facts and the same erroneous arguments that Petitioners advance here were presented to and rejected by the trial court and on appeal. Respondents submit that the decisions of the lower courts were correct and that the record does not support the

[1] In accordance with Rule 29.1 of the Rules of the Supreme Court of the United States, Respondents note that Lafarge Coppee, of Paris, France is the parent corporation of Respondent Lafarge Corporation. Aetna Life and Casualty Company is the parent of Respondent Aetna Life Insurance Company.

notion that they departed in any way from the accepted and usual course of judicial proceedings.

ARGUMENT

The question before the United States District Court for the Eastern District of Louisiana was whether Lafarge Corporation and Aetna Life Insurance Company abused their discretion when they denied some of Petitioners' claims for benefits under the Plan. The District Court reviewed a voluminous record and concluded that Respondents presented

> an unassailable picture of a rational and thoughtful approach to determining which claims should be paid and which ones should be denied. There is no evidence whatsoever in this record that Aetna abused its discretion in the procedure used or in denying the claims under that procedure. No alternative is offered by the other side.

Page 5, Appendix II-1 to the Petition.

Throughout its case, Petitioners have argued the same points it presents to this Court:

1. Summary judgment should have been denied because the identity of the MRI physician was not revealed; and
2. Respondents did not follow Petitioners' interpretation of the recommendation of consulting physician Dr. Robert Reitschel.

The trial court and the Fifth Circuit Court of Appeals addressed each assertion and rightly concluded that neither had merit.

As to the identity of the MRI physician, the trial court debunked this argument on page 6 of its decision. See Appendix II-1 to the Petition. The trial court analyzed the recommendations of the reviewing physician, MRI and the actions of the Plan Administrator. The trial court further found that the Petitioners offered no evidence that there was anything suspect in the way Respondents handled the claims. There was no undisputed material fact, and the court found there was no abuse of discretion by the Administrator. The Court of Appeals affirmed these findings of the trial court.

The Dr. Reitschel factor is another old argument refuted by both lower courts. Petitioners claim that the failure to follow Dr. Reitschel's recommendation "may be taken as an abuse of discretion standing alone." As they have throughout this litigation, Petitioners misstate what Dr. Reitschel said. His report simply observed that a dermatopathologist would be able to verify whether the lesions removed by Dr. Farber were what Farber claimed them to be. Despite Petitioners' assertions to the contrary, Aetna did not challenge Dr. Farber's conclusions and diagnoses. Thus, further tests to verify those conclusions and diagnoses were not necessary. The controversy

PUBLISHER'S NOTE:

The following page is unavailable for filming;

Pg. 5

Respectfully submitted,

JAMES D. MORGAN
Counsel of Record
FISHER & PHILLIPS
201 St. Charles Avenue
Suite 3710
New Orleans, Louisiana 70170
(504) 522-3303

ATTORNEYS FOR RESPONDENT,
LAFARGE CORPORATION

ROBERT L. REDFEARN, JR.
SIMON, PERAGINE,
SMITH & REDFEARN, L.L.P.
30th Floor - Energy Centre
1100 Poydras Street
New Orleans, LA 70163-3000
(504) 569-2030

ATTORNEYS FOR RESPONDENT,
AETNA LIFE INSURANCE COMPANY